

JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13

RONALD DORSEY
Plaintiff Below,
Appellant

VS

AKA MANAGEMENT
Defendant Below,
Appellee

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C.A. No. JP13-22-006645

TRIAL DE NOVO

Submitted: February 27, 2023

Decided: February 27, 2023

APPEARANCES:

Ronald Dorsey, Plaintiff, appeared *Pro Se*

Aka Management, Defendant, appeared represented by attorney Chandra Wallace, Esquire

Sean McCormick, Deputy Chief Magistrate

Peter Burcat, Justice of the Peace

Susan Ufberg, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

CIVIL ACTION NO: JP13-22-006645

RONALD DORSEY VS AKA MANAGEMENT

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

On January 11, 2023 a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick and Judges Peter Burcat and Susan Ufberg went forward in consideration of the cases appealed. Present was the Appellant Ronald Dorsey and Chandra Wallace Esq. on behalf of the Appellee AKA Management. There are three separate sources of litigation between the parties, two of which are being considered by the panel. They are as follows:

The first matter, JP13-22-006245 (AKA Management v. Dorsey et al) was filed on June 1, 2022 seeking forthwith consideration as allowed for within 25 Del. Code § 5115 and alleging that Mr. Dorsey had caused significant damage to the rental unit located at 569A Homestead Road, Wilmington, DE 19805 (hereinafter, "the unit") by tearing out the kitchen and bathroom without the owner's permission. Further, it was alleged that Dorsey had possibly either sublet or vacated the unit. That case was heard on June 9, 2022 and ultimately dismissed without prejudice on July 21, 2022 based upon the lack of service of notice of breach as is required pursuant to 25 Del. Code § 5513 prior to filing. The Court held that the Plaintiff's failure to provide notice rendered the complaint invalid.

A subsequent action – JP13-22-006645 -- was filed on June 14, 2022 by Dorsey also seeking forthwith consideration. Because an order had yet to be issued regarding the first filing, the forthwith request was denied because it was assumed that whatever issues of immediacy existed between the parties would be resolved within the findings of the first matter. In this second source of litigation Dorsey claimed to have been illegally ousted by his landlord from the unit on May 30, 2022 and sought \$12,000 in unspecified damages.

A third and final action – JP13-22-007350 -- was filed by AKA management vs. Dorsey on July 6, 2022. The third action was essentially a re-filing of the first case except that the notice provision had been complied with prior to filing. Again, forthwith consideration was requested. The request came before the Court on July 12, 2022. In that an order regarding the forthwith nature of the first filing had yet to be issued, the Court again at that time elected not to consider the forthwith request of this third filing because it was again assumed that the issues

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of immediacy that may have existed would have been resolved by the Court's findings regarding the first matter. Realizing that two filings remained, in the interest of judicial economy the second and third filings were combined into one omnibus action for the purpose of considering the issues of possession and damages such as they may continue to exist at the time of the combined trial. The combined cases were heard on September 30, 2022; the Court's decision was published on October 20, 2022. In response to his filing (13-22-006645) Dorsey was awarded \$1,449.86 in damages. In JP13-22-007350 AKA Management was awarded possession of the rental unit. From that decision Dorsey appealed both cases. On appeal, Dorsey sought reinstatement to the rental unit as well as \$12,000 in unspecified damages.

Dorsey testified on appeal that he returned from a family vacation on May 30, 2022 to find that he was locked out of the unit. He claimed he made several attempts via telephone and text on May 31 to contact his landlord's agent "Mr. Alan" but was unsuccessful. On June 1 he testified that "Ms. Christine" answered the phone and advised him that the landlord did not wish to speak with him. Admittedly he never sent them written notice advising the landlord that they had violated his rights under the landlord-tenant code. He advised that he didn't file in court with immediacy because he didn't have the money to pay the filing fee until June 14. He was not aware that he could have sought to file *in forma pauperis*. He admitted that while he was on vacation he had employed "Isiah" to rehab the unit by redoing the kitchen and bathroom as well as painting a portion of the unit. He advised that he had not sub-let the unit to "Isiah." He admitted that he never sought written permission to have work done to the unit – let alone work of this magnitude – despite a lease requirement (section 4e) that permission must be sought and given in writing. However, he claimed to have verbal permission from "Mr. Alan." He did supply a taped phone conversation in which he claimed the permission was given. In fact, the conversation had nothing to do with work to be done to the unit. Rather, the conversation centered on Dorsey's rental debt which, through June of 2022 was nearly \$12,000. Those funds were paid to AKA Management as a result of a successful application for DEHAP funds available to tenants in need during the Covid-19 pandemic. When pressed by the panel how he arrived at \$12,000 in damages, Dorsey was unable to specify how he arrived at that figure other than to say that he felt he should be compensated for being illegally ousted.

Testimony was also taken from the landlord's agent Alan Payne ("Mr. Alan") and Christopher Carlantonio, the landlord. Mr. Payne's testimony was simply that, although he will communicate with tenants via telephone or text, the official method of communication is specified both by the landlord-tenant code and the lease – that is, in writing with proof of service. He at no time authorized any repairs to the unit in question, let alone ones that involved plumbing. Carlantonio testified that he was advised by another tenant on June 20, 2022 that strange men were in Dorsey's unit engaging in construction. He and his son then proceeded to the unit where they found the kitchen cabinets removed, the bathroom taken apart, the toilet was removed, and saw generally construction materials laying about. He then conversed with one of the three men (presumably Isiah) who claimed that they were the new tenants and were renting from Dorsey. During the course of the conversation the story changed – instead of subletting, the men were simply there to make repairs. Not sure if the unit was abandoned or illegally sublet, Carlantonio elected to protect the unit (and thereby mitigate any damages he may

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otherwise have suffered) by changing the locks on the unit. Inexplicably, he then gave Isiah a key to the new lock. When asked why he would do this he only said “I made some mistakes.” Thereafter, he claimed to have no contact with Dorsey. He elected to allow his attorney to handle the matter. Counsel sent a letter on June 9, 2022 pursuant to 25 Del. Code § 5513 advising that the work being performed at the unit was a material breach of the terms of the lease. The letter gave Dorsey 7 days to remedy the breach, otherwise it advised that the lease would be terminated and litigation would ensue. It should be noted that Dorsey claimed in his testimony he never received the letter. Through the combined testimony of Payne and Carlantonio a lease establishing the rental relationship at the rate of \$700/month and the 7-day letter sufficient for its purpose were entered as evidence.

The code applicable to Dorsey’s claim is 25 Del. Code § 5313, which states:

If removed from the premises or excluded therefrom by the landlord or the landlord’s agent, except under color of a valid court order authorizing such removal or exclusion, the tenant may recover possession or terminate the rental agreement. The tenant may also recover treble the damages sustained or an amount equal to 3 times the per diem rent for the period of time the tenant was excluded from the unit, whichever is greater, and the costs of the suit excluding attorneys’ fees.

Christopher Carlantonio was justified in his actions in changing the locks on May 30, 2022. The circumstances as he viewed them required him to secure the property both as a means of protecting his unit and any possessions Dorsey may have had therein. But at some point it should have become obvious that the fact that he changed the locks and failed to supply Dorsey a key was an act of exclusion. Specifically, he should have known at the latest on June 9, 2022 when the first case was heard. Indeed, it was noted in the July 21, 2022 order of dismissal that “Dorsey averred that he still resides in the property” and “Claimed that he was unlawfully ousted when Plaintiff allegedly changed the locks.” The order advises further that Dorsey “admitted he had not filed any such claim with the Court (regarding unlawful ouster – which was not filed until June 14, 2022.)” Still and all, the allegation had been verbalized. Although the written order wasn’t issued until July 21, 2022, the judge verbalized his intent to dismiss the matter on the date it was heard – June 9, 2022. Indeed, the 7-day notice upon which the third filing is based is dated June 9. When AKA Management was advised on that date that their filing was to be dismissed, they should have acted to ensure that Dorsey had access to the unit and then lawfully proceeded to repossess the unit under the color of a valid court order. That they failed to do so entitles Dorsey to seek damages pursuant to § 5313. But the question to be raised is for what time-period? As of the hearing of this appeal Dorsey advised he sought possession of the unit. In what sense? It should have been clear that Dorsey was legally dispossessed on June 9. Indeed, at that time the Court order reflects that “Dorsey claimed he was still unable to access the property.” We know he was not constructively evicted; after all, the lack of running water or a working bathroom was not of the landlord’s doing but his own. But, for his claims otherwise, was Dorsey factually excluded? On February 7, 2023 Dorsey filed a request for a forthwith hearing against AKA Management. In the filing he lists his address as 569 Homestead Road, Unit 1 – that is, the unit. He advises he

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has only just received a key, but he clearly has and continues to reside in the unit. As was previously noted, §5313 holds that “the tenant **may** recover treble the damages sustained or an amount equal to 3 time the per diem rent for the period of time the tenant was excluded from the unit . . .” [emphasis added.] The code does not command that such an award be given; rather, it simply allows for its possibility. Despite his assertions otherwise, it seems clear that Dorsey had continued to reside at the unit since his return from vacation last May. And, while the malfeasance of the landlord must be sanctioned -- indeed, the legislative intent of the code section was to both punish and deter -- the notion of treble damages being awarded for such a length of time given the obvious fact that Dorsey has had full access to the unit seemed grossly excessive. Since DEHAP funds paid rent for the month of June, 2022 the panel held that any award regarding that month would amount to unjust enrichment. After all, the monies sought were not paid by Dorsey, but rather via application of federal funds. As a punitive measure the panel elected to award to Dorsey the amount of \$1,469.99 -- that is, treble damages for the period of time between the end of June, 2022 and July 21, 2022 -- the date the order resolving the first filing was issued.

As to AKA’s case in chief seeking possession of the unit, it has been established by a preponderance of evidence that Dorsey failed to remedy the condition complained of within the 7 days given by the landlord pursuant to the code. Therefore, judgment for possession of the unit is hereby awarded to AKA Management. The costs of filing offset and will therefore not be awarded.

IT IS SO ORDERED 27th day of February, 2023

/s/ Sean McCormick

SEAN MCCORMICK

DEPUTY CHIEF MAGISTRATE

ON BEHALF OF THREE JUDGES



Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).

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